

AGREEMENT FOR THE PROVISION OF SERVICES

BETWEEN

MotorSail Pty Ltd ("MotorSail")
ATF Lack Trading Trust
PO Box 352 Paradise Point. QLD, 4216

AND

[the Client]

Dated this _____ day of _____ 2015

(Together the "Parties")

Recitals

- A. MotorSail is a marine survey and consultancy company which provides various marine services including, but not limited to, safety management advice and audits, marine surveying, refit/repair/build management and supervision and expert witness services
- B. The Client wishes to appoint MotorSail to deliver services in accordance with the terms of this Agreement.
- C. The purpose of this Agreement is to record the basis upon which MotorSail will deliver the services to the Client

THE PARTIES AGREE TO THE FOLLOWING:

Liability and limitations

1. All MotorSail services and reports are provided for our named Clients' use only. No liability of whatever nature is assumed towards any other party and nothing in these terms, or the relationship between MotorSail and our Clients, shall confer or purport to confer on any third party a benefit or the right to enforce any provision of these terms.
2. MotorSail shall undertake the services to which these terms relate with reasonable care, skill and diligence, but where the Australian Consumer Law consumer guarantees do not apply, MotorSail shall have no responsibility or liability whatsoever except insofar as the Client suffers loss or damage in consequence of our negligence, gross negligence or wilful default. Notwithstanding any other provision of these terms:
 - 2.1 MotorSail's liability shall expire 12 months after completion of the services in respect of which liability is alleged to arise and we shall thereafter have no liability in respect of those services and/or any alleged default in connection with the provision thereof;
 - 2.2 MotorSail shall not be liable in respect of any breach of our obligations (1) for any loss, damage, delay or expense of whatever nature whether direct or indirect (including but not limited to loss of profit and loss of use) and howsoever arising or resulting whether directly or indirectly in the course of or as a result of the provision of our services, under these terms or otherwise, (2) of which written notification shall not have been given within 14 days of the date on which the Client ought reasonably to have become aware of the existence of such breach, or (3) resulting from unforeseeable causes beyond our reasonable control;
 - 2.3 the Client covenants with MotorSail and our servants and agents that no such servant or agent shall in any circumstances whatsoever be under any liability for any loss arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing, every exemption, limitation and condition herein contained and every right, exemption and limitation of liability applicable to MotorSail or to which MotorSail are entitled hereunder shall also be available to protect every such servant or agent acting as aforesaid and for the purpose of the foregoing provisions MotorSail are or shall be deemed to be acting as agents or trustees on behalf of and for the benefit of all persons who are or might be our servants or agents from time to time and all such persons shall to this extent be or be deemed to be parties to these terms;
 - 2.4 under no circumstances shall MotorSail's liability exceed a total of [10] times the fee payable hereunder.
 - 2.5 Notwithstanding anything set out in these conditions, they are subject to the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 if and to the extent consumer guarantees apply to this Contract and prevent the exclusion, restriction or modification of any such consumer guarantee. MotorSails's liability, if any, for breach of any consumer guarantee which applies shall be limited at our option to the supply of the services again or the cost of having the services supplied again.

Fees

3. Fees and expenses shall become due and payable on such terms and in such amounts as described in Schedule 2. GST shall be payable, if applicable, in addition to all fees and expenses. Invoices will be submitted in respect of all fees and expenses when due and the amount of each invoice shall be settled within 7 days of receipt. Interest shall be payable at a rate of 2.5% on all amounts owing and unpaid.

Default

- 4.1 Client default: MotorSail may terminate our appointment forthwith if the Client fails for more than 14 days to pay any sum due when demanded, or if the Client fails consistently to respond promptly to requests for information and/or instructions and fails adequately to respond to 14 days' formal notice of such failure, without prejudice to our accrued rights.
- 4.2 Other defaults: Either party may terminate our appointment forthwith by notice if the other party shall: have a petition presented for its winding up or administration which is not discharged within 14 days of presentation or any other action is taken with a view to its winding up (otherwise than for the purpose of reorganisation or amalgamation without insolvency), or become bankrupt or commit an act of bankruptcy, or make any arrangement or composition for the benefit of creditors, or have a receiver or manager or administrative receiver or administrator or liquidator appointed in respect of any of its assets, or have anything analogous to any of the foregoing under the laws of any jurisdiction occur to it, or cease or threaten to cease to carry on business; without prejudice to the accrued rights of the other party.

Surveys

5. All survey work undertaken hereunder shall be on terms that, unless otherwise stated in writing, no guarantee is given against faulty design, latent defects or of suitability of the vessel or other item for any particular purpose or of compliance with any particular local, national or international requirement or code, and opinions are given without the benefit of running of machinery or opening up or other dismantling whether of interior linings, machinery or other items or systems.

Valuations

6. All valuation work undertaken shall be on terms that, unless otherwise stated in writing, such work relates solely to the date and place referred to. Valuations are based on opinions only and are not representations of fact, nor do they carry with them any guarantee of the particulars or information on which our opinions are based. Valuations assume a willing buyer and willing seller and market conditions applicable at the time of valuation or such other date as is expressly referred to.

Law and disputes

7. These terms shall be governed by and construed in accordance with Australian law and any dispute or difference arising, or claim made, between or by the parties out of or in relation to or in connection with the provision of services to which these terms relate and which cannot be resolved by the parties shall be submitted to the non-exclusive jurisdiction of the High Court of Australia.

Miscellaneous

8. No exercise or failure to exercise or delay in exercising any right, power or remedy vested in either party shall be deemed to be a waiver by that party of that or any other right, power or remedy.
9. Neither party shall transfer or assign its rights or obligations under these terms without the prior written consent of the other.
10. In the event that any provision of these terms is held to be a violation of any applicable law, statute or regulation the same shall be deemed to be deleted from these terms and shall be of no force or effect and these terms shall remain in full force and effect as if such provision had not been contained therein. Notwithstanding the foregoing in the event of any such deletion the parties shall negotiate in good faith in order to agree the terms of an acceptable alternative provision.
11. These terms form the entire agreement between the parties and supersede all previous agreements and understandings between the parties, and no warranty, condition, description, term or representation is given or to be implied by anything said or written in negotiations between the parties or their representatives prior to the communication of these terms.
12. References to "we" and "us" include MotorSail and its employees and persons, firms and companies appointed or engaged by MotorSail as our agents for carrying out any work or services under these terms, all persons, firms and companies to whom performance of any work or services under these terms is sub-contracted or delegated by MotorSail, and all agents and employees of persons, firms and companies referred to in this clause.
13. Any communication required to be given under these terms by either party shall be in writing and shall be sufficiently given either by letter, fax or electronic mail (provided the same is capable of being recorded by the recipient in durable form) sent to the other at the contact details previously notified and any such notice shall be deemed to have been given at the time at which it would in the ordinary course of transmission have been received.
14. Both parties undertake to maintain the confidentiality of all information supplied by each other and not to divulge such information to third parties without the prior written authority of the other.

SIGNED BY THE PARTIES:

The Client acknowledges that they have read, understood and agreed to these Terms and Conditions executed as an agreement.

For and on behalf of MotorSail		For and on behalf of the Client	
Signed:		Signed:	-----
Name:	DARREN LACK	Name:	-----
Position:	MANAGING DIRECTOR	Position: (if company)	-----
Date:			

1. Schedule 1 – Scope of the agreement & services to be provided:

2. Schedule 2 – Fees:

Payment terms: Invoices payable 7 days from date of invoice, with interest accruing thereafter at 2.5%